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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:

Glendale/Goodwin Realty I, LLC, an Ohio limited liability company, The Kroger Co., an Ohio corporation, and Ralphs Grocery Company, an Ohio corporation

UNDER THE AUTHORITY OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, 42 U.S.C § 9601 *et seq.*

Docket Number: 2012-01

AGREEMENT, ORDER ON CONSENT AND COVENANT NOT TO SUE

Glendale/Goodwin Realty I, LLC, an Ohio limited liability company,
The Kroger Co., an Ohio corporation, and
Ralphs Grocery Company, an Ohio corporation

I. INTRODUCTION

A. This Agreement, Order on Consent and Covenant Not to Sue ("**Agreement**") is made and entered into by and among the United States on behalf of the Environmental Protection Agency ("**EPA**"), and Glendale/Goodwin Realty I, LLC, an Ohio limited liability company ("**GGRI**"), The Kroger Co., an Ohio corporation ("**Kroger**"), and Ralphs Grocery Company, an Ohio corporation ("**RGC**") (collectively the "**Parties**"). GGRI and RGC are subsidiaries of Kroger.

B. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("**CERCLA**"), 42 U.S.C. § 9601, *et seq.*, and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

C. This Agreement pertains to the real property ("**Property**") described in Appendix I (Legal Description of the Property), located in the City of Los Angeles, County of Los Angeles, state of California, bearing the street addresses 4057 and 4059 Goodwin Avenue and referenced as Assessor Parcel Number 5593-020-020.

D. GGRI proposes to purchase the Property and remediate it as herein contemplated. Thereafter RGC as further described below intends to use the Property to expand the operations of its existing warehouse and distribution facility located on adjacent property that it owns. Collectively, GGRI, Kroger, and RGC are referred to herein as "**Settling Respondents**."

E. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections XI, XII, XIII and XIV, the potential liability of the Settling Respondents for the Existing Contamination at the Property that would otherwise result from Settling Respondents becoming the owner(s) of the Property, so that, subject to Settling

Respondents' complete performance of their obligations under this Agreement, their existing potential liability for the Site (as defined below), including without limitation its Glendale North and South Operable Units, shall not be increased or decreased by their acquisition of the Property.

F. The Parties agree that the Settling Respondents' entry into this Agreement, and the actions undertaken by the Settling Respondents in accordance with this Agreement, do not constitute an admission of any liability by the Settling Respondents.

G. The resolution of potential liability is given by EPA to Settling Respondents in exchange for provision of a substantial benefit in the form of investigation and cleanup of hazardous substances, pollutants or contaminants in soils at the Property by Settling Respondents, as more particularly described below, and is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

- a. **"Agreement"** shall mean this Agreement, Order on Consent and Covenant Not to Sue and all appendices or exhibits attached hereto (listed in Section XXVI). In the event of conflict between this Agreement and any appendix or exhibit, this Agreement shall control.
- b. **"CERCLA"** shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*
- c. **"Conditional Approval Letter"** means the letter attached as Appendix III (Conditional Approval Letter), dated November 1, 2010, by which Samuel Unger, Executive Officer of LARWQCB, communicated to Ms. Alice C. Clarno in her capacity as Trustee of The Spirito Family Trust, owner of the Property, the conditional approval of the Remedial Action Plan in reference to the Property, attached as Appendix IV (Remedial Action Plan Approved by LARWQCB).
- d. **"Day"** shall mean a calendar day unless expressly stated to be a working day. **"Working Day"** shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- e. **"Effective Date"** shall be the effective date of this Agreement as provided in Section XXIV (Effective Date).
- f. **"EPA"** shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- g. **"Excello"** shall mean Excello Plating Co., Inc., a now suspended California corporation.

- h. **"Excello Building"** shall mean the approximately 13,800-square foot building located on the Property's southern portion that is currently vacant.
- i. **"Existing Contamination"** shall mean:
- any hazardous substances, pollutants or contaminants released or disposed of at the Property that are present or existing on or under the Property as of the Effective Date of this Agreement;
 - any hazardous substances, pollutants or contaminants released or disposed of at the Property that migrated from the Property prior to the Effective Date of this Agreement; and
 - any hazardous substances, pollutants or contaminants released or disposed of at the Property that migrate onto or under or from the Property after the Effective Date of this Agreement.
- "Existing Contamination" shall not include hazardous substances, pollutants or contaminants released or disposed of at portions of the Site other than the Property regardless of whether such hazardous substances, pollutants, or contaminants migrated to, under, or from the Property.
- j. **"Institutional Controls"** shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of the remedy by restricting land and/or resource use. Examples of institutional controls include, but are not limited to, easements and covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.
- k. **"Interest"** shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- l. **"LARWQCB"** means the state of California Los Angeles Regional Water Quality Control Board.
- m. **"LARWQCB PPA"** shall mean the Prospective Purchaser Agreement and Covenant Not to Sue File No. 113.5243, entered into by and between Settling Respondents and LARWQCB on September 22, 2011.
- n. **"National Contingency Plan"** or **"NCP"** shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

- o. **"Paragraph"** shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.
- p. **"Parties"** shall mean EPA and Settling Respondents.
- q. **"Potentially Responsible Party(ies)"** or **"PRP(s)"** shall mean parties who may be liable pursuant to CERCLA Section 107(a)(1)-(4).
- r. **"Property"** means the real property described in Appendix I (Legal Description of the Property), located in the City of Los Angeles, County of Los Angeles, state of California, bearing the street addresses 4057 and 4059 Goodwin Avenue and referenced as Assessor Parcel Number 5593-020-020. The Property encompasses approximately .96 acres. The Property is located within the Glendale Operable Units of the Area 2 San Fernando Valley Superfund Site. The San Fernando Valley Superfund sites and the Glendale Operable Units in particular are more particularly described in Paragraphs "v" and "x" below. A map showing the location of the Property within the San Fernando Valley Area 2 Superfund Site is attached as Appendix II.
- s. **"Remedial Action Plan"** means the operative provisions set forth in Sections 8 through 11 of the *Remedial Action Plan, The Spirito Family Trust Parcel 4057 and 4059 Goodwin Avenue (including the Former Excello Plating Co., Inc. Facility), City of Los Angeles, California, LARWQCB Reference: Excello Plating Co., Inc., CAO NO. R4-2003-0038-R, LARWQCB Site ID no. 2040209, and LARWQCB File no. 113.5243*, dated September 30, 2010, submitted by Kleinfelder West, Inc. to LARWQCB, object of the Conditional Approval Letter, and attached as Appendix IV.
- t. **"Section"** when referring to a portion of this Agreement shall mean a portion of this Agreement identified by a Roman numeral.
- u. **"Response Costs"** shall include all direct or indirect costs incurred by EPA or the United States in preparing this Agreement, and in monitoring, supervising or overseeing Settling Respondents' performance of the Work, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Agreement or pursuant to the requirements of LARWQCB, as well as costs incurred in overseeing implementation of the Work.
- v. **"San Fernando Valley Superfund Sites"** refers to four Superfund sites added to the National Priorities List by EPA on June 10, 1986: Areas 1, 2, 3 and 4. Each Area corresponds to wellfields found to be contaminated with volatile organic compounds ("VOCs") in the early 1980's.
- w. **"Settling Respondents"** shall mean GGRI, Kroger, and RGC.
- x. **"Site"** or **"Area 2 Superfund Site"** shall mean the San Fernando Valley Area 2 Superfund Site, encompassing approximately 9,726 acres, located generally in the area of Glendale, California. The Site includes, but is not limited to, the Glendale North and South Operable Units and the Glendale Chromium Operable Unit, and all areas to which

hazardous substances and/or pollutants or contaminants have come to be located at or from the Site. The Site includes but is not limited to the Property.

- y. **"State"** shall mean the state of California.
- z. **"Trust"** shall mean The Spirito Family Trust, Alice C. Clarno, Trustee.
- aa. **"United States"** shall mean the United States of America, its departments, agencies, and instrumentalities.
- bb. **"Waste Material"** shall mean shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any substance that is then defined or listed in, or otherwise classified pursuant to, any applicable California law or regulation as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP toxicity," or "EP toxicity."
- cc. **"Work"** shall include all activities that Settling Respondents, or any of them, are required to perform at the Property pursuant to this Agreement or to the requirements of LARWQCB.

III. STATEMENT OF FACTS

1. The San Fernando Valley Superfund Sites, Areas 1, 2, 3 and 4 combined, comprise a series of plumes of VOC-contaminated groundwater. Areas 1, 2 and 4 comprise a series of plumes approximately eleven miles long and four miles wide, ranging from North Hollywood in the northwest to Los Angeles in the southeast. Area 3 is non-contiguous with Areas 1, 2 and 4, and has been deleted from the National Priorities List ("NPL"). Area 2 is geographically located in the groundwater beneath the southerly portion of Burbank and throughout Glendale. The Glendale North and South OUs, including the Glendale Chromium OU, comprise an area of approximately 15.2 square miles of ground water contamination within the San Fernando Valley Groundwater Basin. The Property is within the Site to the southeast, as shown on Appendix II.
2. As stated above at Section II.v, the Site was added to the NPL on June 10, 1986. After conducting a Remedial Investigation and Feasibility Study ("**RI/FS**") of the Site, EPA established two operable units within the Site: Glendale North and Glendale South. On June 18, 1993, EPA signed Records of Decision in which EPA selected interim remedial actions for the Glendale North and South Operable Units. The interim remedial actions required the construction of two (north and south) extraction wellfields, extraction and treatment of groundwater at a combined treatment plant for volatile organic compounds ("**VOCs**"), and delivery of the treated water to the city of Glendale's potable water system, for twelve years. On August 2, 2000, EPA entered into a consent decree with potentially responsible parties ("**PRPs**") to implement the interim remedial actions for the

Glendale North and South Operable Units ("**Consent Decree**"). The interim remedial actions for the Glendale North and South Operable Units were selected primarily to respond to VOC contamination in area groundwater, and are not currently capable of treating hexavalent chromium ("CrVI") or other metals contamination. In July 2007, EPA established the Glendale Chromium Operable Unit to respond to increasing levels of hexavalent chromium in the area groundwater. Hexavalent chromium has been detected in certain of the Glendale North and South Operable Units extraction wells and in the treatment system for the extracted water.

3. Various environmental assessments performed on the Property, as more fully set forth in the Remedial Action Plan set forth as Appendix IV, have found soil and groundwater contamination resulting from the Property's use for plating activities, including but not limited to volatile organic compounds and hexavalent chromium.
4. The Spirito Family Trust, Alice C. Clarno, Trustee (the "**Trust**"), owns the Property in fee simple absolute. The Excello Plating Co., Inc., a now suspended California corporation ("**Excello**"), operated its business on the Property from at least 1963 through its abandonment of the Property in about December 2004. Previously, commencing in 1946, a business known as Plating Engineering Company operated a plating facility on the Property. These two businesses undertook plating, anodizing, and painting of metal components at the Property. On September 12, 1955, a fire destroyed the Plating Engineering Company facility, located on the Property's northern portion. The Excello facility, located on the Property's southern portion and currently vacant, comprises an approximately 13,800-square foot building (the "**Excello Building**"), which housed office space, a decorative chrome plating department, an anodized plating process area, a hard chrome process area, a paint booth, and a plating supply storage area. The Spirito Family Trust and Excello each received General and Special Notice as PRPs for the Glendale Operable Units, and are parties to the Consent Decree. The Glendale Consent Decree provides for implementation of the interim remedies for groundwater contamination in the Glendale Operable Units. The Glendale Consent Decree does not provide for cleanup of soils at properties within the Glendale Operable Units; nor does it provide covenants to parties for soil contamination at their respective, individual properties.
5. Under a Cooperative Agreement with EPA in the 1990's and subsequently pursuant to its independent regulatory activities, LARWQCB has conducted site-specific soil investigations throughout the Glendale Operable Units, including at the Property, and has required soil cleanups at many such facilities.

The state of California has taken the following actions to require site-specific cleanup of the Property.

- a. On June 20, 2003, LARWQCB issued Cleanup and Abatement Order ("**CAO**") No. R4-2003-0038 to Excello, ordering Excello to assess, clean up, and abate the effects of discharges to soil and groundwater at the Property.
- b. On June 2, 2005, LARWQCB issued a Revised CAO No. R4-2003-0038-R that required Excello and the Trust to conduct further soil and groundwater investigations.

- c. On October 7, 2005, the California Department of Toxic Substances Control issued to the Trust an Imminent and Substantial Endangerment Determination and Order, Docket No. HWCA SRPD 05/06 SAEP-4346.
 - d. LARWQCB issued a September 25, 2007 Second Amendment to CAO No. R4-2003-0038-R, in which it determined that the primary source of the elevated chromium concentrations at the Glendale South Operable Unit Extraction Well GS-3 originated from the Property and identified Excello as a responsible party.
 - e. On November 1, 2010, LARWQCB issued the Conditional Approval Letter to the Trust, conditionally approving the Remedial Action Plan set forth in Appendix IV and ordering its implementation. Page 8 of the Remedial Action Plan set forth in Appendix IV states:

“The goal of the RAP [Remedial Action Plan] is to prevent, by achieving proposed cleanup goals, future migration of the COCs [Contaminants of Concern, identified as PCE, TCE and hexavalent chromium] present in Site vadose-zone soil to underlying groundwater. This RAP is not intended to address groundwater contamination. In particular, it is not intended to address the regional volatile organic compound and hexavalent chromium groundwater contamination. EPA is addressing such contamination through Federal Superfund proceedings that include the Glendale South Operable Unit (GSOU) of the San Fernando Valley Superfund Site.”
 - f. On July 14, 2011, LARWQCB authorized signature of the LARWQCB PPA by the Executive Officer of LARWQCB.
- 6. The remaining assets of the Trust are reported by the Trust to consist chiefly of the Property and limited liquid assets. The assets of the Trust are insufficient to fund the remediation of the Property. EPA is addressing the groundwater contamination under and in the vicinity of the Property as part of its conduct of Superfund remediation proceedings in respect of the Site as determined by the RODs signed by EPA in 1993 for the Glendale North and South Operable Units.
 - 7. RGC owns and operates the RGC facility, located at 4841 San Fernando Road in the City of Los Angeles, California, operating it as a warehouse and distribution center. RGC received General and Special Notice on May 2, 1995 and October 12, 1995, respectively, as a PRP for the Glendale Operable Units, and is a party to the Consent Decree.
 - 8. The RGC facility is located next to the Property and Settling Respondents propose to expand the RGC warehousing and distribution center onto the Property. The Settling Respondents represent, and for the purposes of this Agreement, EPA relies on those representations, that Settling Respondents' involvement with the Property has been limited to the following:
 - a. Settling Respondent RGC holds the right to use, and has used, the paved northern portion of the Property to park empty delivery trailers pursuant to a month-to-month License from the Trust. The license was first granted pursuant to an

agreement dated July 14, 1980 between Federated Department Stores, Inc., dba Ralphs Grocery Company and the Trust. The area licensed is described in the 1980 agreement as "the most northerly approximately 216.16 feet of the Property, measured along and at a 90° angle to the westerly property line thereof." The 1980 agreement further describes the "most southerly approximately 215.5 feet" of the Property "measured along and at a 90° angle to the westerly property line thereof" as "leased by Licensor [the Trust] to Excello Plating Co."

- b. At various times, various of Settling Respondents have explored potential interest in acquisition of the Property. In particular, Settling Respondents, in furtherance of their evaluation of their potential interest in purchase of the Property have taken the following actions pertinent to defining the conditions and associated cost of the remediation of the Property: They have paid the fees of Kleinfelder West, Inc., an environmental engineering firm, to provide (i) characterization of the Property as directed by LARWQCB to be performed by the Trust so as to identify and address data gaps remaining after previous investigations and (ii) technical assistance pertinent to the formulation of the Remedial Action Plan attached as Appendix IV and related estimations of feasibility and costs of implementation. The work product of Kleinfelder West, Inc. is embodied in submittals to LARWQCB, by Kleinfelder West, Inc., on behalf of the Trust, commencing in 2008 and responsive to LARWQCB communications addressed to the Trust, of a Proposed Limited Phase II ESA Technical Scope of Services, a Work Plan for a Supplemental Site Assessment, a Supplemental Site Assessment, as well as various documentation preparatory of the formulation, and estimation of the feasibility and costs of implementation, of the Remedial Action Plan.
9. RGC and the Trust entered into an Exclusive Negotiation Agreement, dated April 8, 2009 and subsequently amended, pursuant to which the Trust granted RGC an exclusive right to negotiate the purchase of the Property for the term there set forth, which rights RGC subsequently assigned to GGRI. With the purchase of the Property, RGC will have a contiguous area in which to expand its warehousing operations. RGC's current operations are approximately 39.6 acres, which will be augmented by .96 acres for a total of 40.56 acres after acquiring the Property.
10. GGRI and the Trust have entered into an Agreement for the Purchase and Sale of Real Property and Joint Escrow Instructions, dated February 3, 2011 and setting forth the terms and conditions on which GGRI would acquire ownership of the Property from the Trust, subject to conditions that include the effectiveness of this Agreement and of a Prospective Purchaser Agreement ("PPA") among Settling Respondents and LARWQCB. The PPA between Settling Respondents and LARWQCB, like this Agreement, is intended to shield Settling Respondents from liability for existing contamination by virtue of their acquisition of the Property, in exchange for completion of the Work implementing the Remedial Action Plan.
11. After purchase of the Property, GGRI will perform response actions at the Property to remove the sources of hazardous substances, pollutants and contaminants in the soil at the Property, in order to prevent the ongoing and future release from soils at the Property to the groundwater of hazardous substances, pollutants and contaminants, including but not limited to hexavalent chromium. Remediation of contaminated soil at the Property is

necessary to remove the sources of volatile organic compound and metals contaminants in the soil at the Property and prevent the ongoing and potential future release from soil at the Property of such contaminants to the groundwater. Settling Respondents will not remediate the groundwater under the Property, which may continue to be contaminated by upgradient sources, pursuant to this Agreement. There will be a significant public benefit in removing the sources of contamination in the soils at the Property and returning the Property to commercial use in the community. Settling Respondents have represented to EPA that the entry by EPA into this Agreement with Settling Respondents is necessary to achieve the timely implementation of the Remedial Action Plan attached as Appendix IV.

IV. AGREEMENT

12. In consideration of and in exchange for the United States' Covenant Not to Sue in Section XII, Settling Respondents agree to comply with all provisions of this Agreement, including, but not limited to, all attachments to this Agreement and all documents incorporated by reference into this Agreement.

V. WORK TO BE PERFORMED

13. Settling Respondents shall perform, at a minimum, all actions necessary to implement the Remedial Action Plan. The actions to be implemented generally include, but are not limited to, the following, all as defined by the Remedial Action Plan: (i) the removal from the Property of the former Excelllo Plating building; (ii) the remediation of the contaminants of concern in soil that are the focus of the Remedial Action Plan, namely the volatile organic substances PCE and TCE, and hexavalent chromium, (iii) the installation of a cap to impede infiltration of residual contaminants to groundwater, and (iv) the recordation of a deed restriction on the Property.
14. Settling Respondents shall perform all actions required by this Agreement in accordance with all applicable local, state, and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j).
15. Remedial Action Plan and Implementation.
 - a. EPA concurs with the Conditional Approval of Ralphs Remedial Action Plan – Cleanup and Abatement Order No. R4-2003-0038-R for Excelllo Plating Company Inc., dated November 1, 2010, issued by LARWQCB to The Spirito Family Trust (“Conditional Approval Letter”). The Remedial Action Plan provides a description of the actions required and a schedule for their implementation. Exhibit E to the LARWQCB PPA sets forth an updated schedule for their implementation. A copy of Exhibit E to the LARWQCB PPA is attached to this Agreement as Appendix VII. As described in the Conditional Approval Letter, certain legal tasks prerequisite to transfer title of the Property to GGRI will be performed between approval of the Remedial Action Plan and GGRI’s acquisition of title to the Property. Therefore, the schedule included in Exhibit E to the LARWQCB PPA runs from the date of one or more of Settling Respondents’ acquisition of the Property. The project

schedule may be updated with each or one or more RAP implementation task workplan.

b. EPA anticipates that the Remedial Action Plan shall be implemented according to LARWQCB's established procedures, and that LARWQCB and EPA each will conduct oversight of the implementation of the Remedial Action Plan.

16. EPA's continued concurrence in the Remedial Action Plan and the effectiveness of this Agreement are conditioned on EPA's concurrence in (a) any material changes to the Remedial Action Plan, including but not limited to the tasks and schedule set forth therein, and Exhibit E to the LARWQCB PPA, (b) any schedule prepared upon initiation of remedial activities, implementation of task workplans or otherwise for implementation of the Remedial Action Plan, (c) any material extensions of time to complete scheduled tasks; and (d) LARWQCB approval of any reports prepared pursuant to the Remedial Action Plan, including but not limited to the Final Report.

a. According to the LARWQCB PPA, Section 5.2(a), GGRI shall submit a final report to LARWQCB to summarize the results and findings from the implementation of the Remedial Action Plan, conditioned upon satisfaction of the premises set forth in Exhibit E to the LARWQCB PPA, no later than 1650 calendar days following acquisition of title to the Property by one or more of Settling Respondents. The Remedial Action Plan's other major milestones include completion of the following tasks:

- i. Well Abandonment and Installation;
- ii. Hazardous Building Materials Abatement and Building Demolition;
- iii. Large Diameter Auger/In-Situ Chemical Reduction (LDA/ISCR) Pilot Testing and Closeout;
- iv. Cap Installation and Maintenance;
- v. SVE Pilot Testing/O&M/Rebound Testing;
- vi. Post-Remedial Action Fieldwork and Risk Assessment;
- vii. SVE Closeout Documentation; and
- viii. Post-Remedial Closeout Documents.

b. Settling Respondents shall not commence any Work except in conformance with the terms of this Agreement and the requirements of LARWQCB.

- c. Upon request by EPA, Settling Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Settling Respondents shall notify EPA not less than thirty (30) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Settling Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Settling Respondents' implementation of the Work.

- d. Post-Remedial Action Plan Site Control

Settling Respondents shall implement the provisions of Section 8.1.7 of the Remedial Action Plan for post-removal site control consistent with Section 300.415(l) of the NCP and considering OSWER Directive No. 9360.2-02. Due to the commercial/industrial site-specific cleanup levels established in the Remedial Action Plan, post-removal site control requires use of the deed restriction contemplated by the Remedial Action Plan, limiting future property use to commercial and industrial uses. Settling Respondents shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

- e. Off-Site Shipments.

- i. Settling Respondents shall, prior to any off-site shipment of Waste Material from the Site to an out-of-State waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the EPA Remedial Project Manager. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards.
- ii. Settling Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Settling Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

- iii. The identity of the receiving facility and state will be determined by Settling Respondents following the award of the contract for shipment(s) associated with the Remedial Action Plan. Settling Respondents shall provide the information required above as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

f. Emergency Response

- i. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondents shall immediately take all appropriate action. Settling Respondents shall take these actions in accordance with all applicable provisions of this Agreement, in order to prevent, abate, or minimize such release or endangerment caused or threatened by the release. Settling Respondents shall also immediately notify the EPA Remedial Project Manager ("RPM") or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Response Line, Region 9 at (800) 300-2193, of the incident or Site conditions. In the event that Settling Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Settling Respondents shall reimburse EPA all costs of the response action not inconsistent with the National Contingency Plan ("NCP") pursuant to Section VI (Payment).
- ii. Nothing in the preceding Paragraph or in this Agreement shall be deemed to limit any authority of the United States: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XII (Covenant Not to Sue by United States).

VI. PAYMENT

17. In consideration of and in exchange for the United States' Covenant Not to Sue in Section XII herein, Settling Respondents agree to pay to EPA its Response Costs and to perform the Work described in Section V (Work to be Performed).

- a. Settling Respondents shall pay EPA all Response Costs not inconsistent with the National Contingency Plan ("NCP"). On a periodic basis, EPA will send Settling Respondents a bill requiring payment that includes a SCORES or other standard Regionally-prepared report, which includes direct and indirect costs incurred by EPA and its contractors. Unless otherwise directed by EPA, Settling Respondents shall make all payments required by this Paragraph by certified or cashier's check made payable to "EPA Hazardous Substance Superfund," referencing the name and address of Settling Respondents, the Site name (SFV Area 2, OU4, Excello Plating), EPA Region and Site/Spill ID Number 09SF, and the EPA docket number for this action. Settling Respondents shall send each check to:

EPA
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

EPA may direct that Settling Respondents make payments by electronic wire transfer. Wire transfers shall be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency," and reference the name and address of Settling Respondents, the Site name, EPA Region and Site/Spill ID Number 09SF, and the EPA docket number for this action.

- b. In the event that a payment for Response Costs is not made within thirty (30) days of Settling Respondents' receipt of a bill, Settling Respondents shall pay Interest on the unpaid balance. Interest shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment.
- c. The total amount to be paid by Settling Respondents pursuant to this Paragraph shall be deposited by EPA in the Glendale Operable Units Special Account or the Glendale Chromium Operable Unit Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or

finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

- d. At the time of each payment, Settling Respondents shall send notice that such payment has been made to:

David Wood
Management and Technical Services Division, Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street (MTS 4)
San Francisco, California 94105
Direct Dial: (415) 972-3709
Fax: (415) 947-3356
E-mail: Wood.David@epa.gov

- e. Pursuant to Section XV (Dispute Resolution), Settling Respondents may dispute all or part of a bill for Response Costs if Settling Respondents determine that EPA has made a mathematical error or included a cost item that is outside the definition of Response Costs, or if Settling Respondents believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Settling Respondents shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 17 on or before the due date. Within the same time period, Settling Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Settling Respondents shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 17. Settling Respondents shall ensure that the prevailing party in the dispute receives the amount upon which it prevailed from the escrow funds plus any interest accrued within twenty (20) calendar days after the dispute is resolved.

VII. ACCESS/NOTICE TO SUCCESSORS IN INTEREST/INSTITUTIONAL CONTROLS

18. Commencing upon the date that they, or any of them, acquire title to the Property, Settling Respondents agree to provide to EPA, its authorized officers, employees, representatives, and all other persons performing response actions in connection with the implementation of the Remedial Action Plan under EPA or LARWQCB oversight, an irrevocable right of access to the Property and to any other property to which access is required for the implementation of such response actions at the Property, to the extent access to such other property is controlled by the Settling Respondents, for the purposes of performing and overseeing response actions at the Property under federal law. EPA agrees to provide reasonable notice to the Settling Respondents of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by

the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”), and any other applicable statute or regulation, including any amendments thereto.

19. Settling Respondents shall implement and comply with any land use restrictions and institutional controls on the Property in connection with the Remedial Action Plan, post-Remedial Action Plan site controls, and/or any response action.
20. For so long as Settling Respondents are owner(s) or operator(s) of the Property, Settling Respondents shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA or LARWQCB oversight. Settling Respondents shall require that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action, and not contest EPA’s authority to enforce any land use restrictions and institutional controls on the Property.
21. Upon sale or other conveyance of the Property or any part thereof, Settling Respondents shall require that each grantee, transferee or other holder of an interest in the Property or any part thereof shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Settling Respondents shall require that each grantee, transferee or other holder of an interest in the Property or any part thereof shall implement and comply with any land use restrictions and institutional controls on the Property in connection with the Remedial Action Plan, post-Remedial Action Plan site controls, and/or any response action and not contest EPA’s authority to enforce any land use restrictions and institutional controls on the Property.
22. Settling Respondents shall provide a copy of this Agreement to any current lessee, sublessee, and other party with rights to use the Property as of the Effective Date.
23. With respect to the Property, within fifteen (15) days after the Effective Date of this Agreement or the date of acquisition of any such property, whichever date is later, the Settling Respondent(s) shall submit to EPA for review and approval a notice to be filed with the Recorder’s Office, Los Angeles County, state of California, which shall provide notice to all successors-in-title that the Property is part of the Site, that EPA selected a remedy for the Site in 1993, and that PRPs have entered into a Consent Decree entered August 2, 2000, in the United States District Court for the Central District of California, styled *United States v. ITT Industries, Inc.*, (Docket No. CV 99-000442 MR) (ANx), requiring implementation of the interim remedy. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of the case, and the date the Consent Decree was entered by the Court. Such notice(s) shall be in addition to or in combination with any other notice of required institutional controls mandated by the Remedial Action Plan, post-Remedial Action Plan site controls, and any other response action. Settling Respondents shall record the notice(s) within ten (10) days of EPA’s approval of the notice(s). Settling Respondents

shall provide EPA with a certified copy of the recorded notice(s) within ten (10) days of recording such notice(s). If Settling Respondents or any of them, or third parties, have previously filed such notice(s) with respect to the Property or other property owned or controlled by Settling Respondents within the Site, Settling Respondents may demonstrate such prior filing in lieu of complying with this provision a second time.

24. Settling Respondents shall ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation. Settling Respondents shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the Effective Date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section of the Agreement and Section V of this Agreement (Work to be Performed).

VIII. DUE CARE/COOPERATION

25. Settling Respondents shall exercise due care at the Property with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations, including but not limited to:

a. Settling Respondents shall exercise appropriate care with respect to hazardous substances found at the Property by taking reasonable steps to:

- (i) stop any continuing release;
- (ii) prevent any threatened future release; and
- (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.
- (iv) Settling Respondents shall provide full cooperation, assistance and access to persons that are authorized to conduct response actions or natural resource restoration at the Property (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the Property);

b. Settling Respondents shall (i) comply with any land use restrictions established or relied on in connection with the response action at the Property; and (ii) not impede the effectiveness or integrity of any institutional control employed at the Property in connection with a response action; and (iii) comply with any request for information or administrative subpoena issued by EPA.

26. The Settling Respondents recognize that the implementation of response actions at the Property may interfere with the Settling Respondents' use of the Property, and may require closure of its operations or a part thereof. The Settling Respondents agree to cooperate fully with EPA and LARWOCB in the implementation of response actions at the Property and further agree not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to

minimize any interference with the Settling Respondents' operations by such entry and response. In the event the Settling Respondents become aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release.

IX. INDEMNIFICATION

27. Settling Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Agreement. In addition, Settling Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Settling Respondents, Settling Respondents' officers, directors, employees, agents, contractors, subcontractors and any persons acting on Settling Respondents' behalf or under Settling Respondents' control, in carrying out activities pursuant to this Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Respondents in carrying out activities pursuant to this Agreement. Neither Settling Respondents nor any such contractor shall be considered an agent of the United States.
28. The United States shall give Settling Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Settling Respondents prior to settling such claim.
29. Settling Respondents waive all claims against the United States for damages or reimbursement or for setoff of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Settling Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

X. NOTICE OF COMPLETION

30. When EPA determines, after EPA's review of Settling Respondents' Remedial Action Plan Implementation Closeout Report, that all Work, with the exceptions noted below, has been fully performed in accordance with this Agreement, and LARWQCB provides

written notice of its determination that all Work has been fully performed in compliance with its requirements, EPA will concur in LARWQCB's determination. EPA's concurrence that all Work has been fully performed shall be with the exception of any continuing obligations required by this Agreement, including continued compliance with CERCLA § 101(40) with respect to the Property in accordance with Section VIII, Paragraphs 25 and 26, and the post-remediation site controls, record retention and compliance with institutional controls contemplated by the Remedial Action Plan and this Agreement. If EPA determines that any such Work has not been completed in accordance with this Agreement, EPA will notify Settling Respondents, provide a list of the deficiencies, and require that Settling Respondents modify the applicable work plan if appropriate in order to correct such deficiencies. Settling Respondents shall implement the modified and approved work plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Settling Respondents to implement the approved modified work plan shall be a violation of this Agreement.

XI. CERTIFICATION

31. By entering into this Agreement, the Settling Respondents certify that to the best of their knowledge and belief, they have fully and accurately disclosed to EPA all information known to Settling Respondents and all information in the possession or control of their officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Property and to their qualification for this Agreement. The Settling Respondents also certify that to the best of their knowledge and belief they have not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Property. If the United States determines that information provided by Settling Respondents is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

XII. UNITED STATES' COVENANT NOT TO SUE

32. Subject to the Reservation of Rights in Section XIII of this Agreement, upon payment of the amount(s) specified in Section VI (Payment) of this Agreement, and upon completion of the work specified in Section V (Work to Be Performed) to the satisfaction of EPA, the United States covenants not to sue or take any other civil or administrative action against Settling Respondents for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination.

XIII. RESERVATION OF RIGHTS

33. The covenant not to sue set forth in Section XII above does not pertain to any matters other than those expressly specified in Section XII (United States' Covenant Not to Sue). The United States reserves and this Agreement is without prejudice to all rights against Settling Respondents with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by a Settling Respondent to meet a requirement of this Agreement, including but not limited to Section VI (Payment), Section V (Work to be Performed), Section VII (Access/Notice to Successors in Interest), Section VIII (Due Care/Cooperation, and Section XIX (Payment of Costs);
 - b. any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by a Settling Respondent, its successors, assignees, lessees or sublessees;
 - c. any liability resulting from exacerbation by a Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;
 - d. any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;
 - e. criminal liability;
 - f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA;
 - g. liability to respond to hazardous substances, pollutants or contaminants released or disposed of at portions of the Site other than the Property and that affect the operation or maintenance of the Glendale Operable Units extraction and treatment system or any subsequent interim or final remedy selected by EPA for the Glendale Operable Units or Glendale Chromium Operable Unit; and
 - h. liability for violations of local, State or federal law or regulations.
34. With respect to any claim or cause of action asserted by the United States, the Settling Respondent(s) shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.
35. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.
36. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondents to perform or pay for response actions at the Site, or to seek to compel Settling Respondents to perform or pay for response actions at the Site based on Settling Respondents' status at the Site other than the ownership of the Property. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Respondents acknowledge that GGRI is purchasing Property where response actions may be required.

XIV. SETTLING RESPONDENT'S COVENANT NOT TO SUE

37. In consideration of the United States' Covenant Not To Sue in Section XII of this Agreement, Settling Respondents hereby covenant not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA §§ 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA §§ 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.
38. The Settling Respondents reserve, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondents' plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XV. DISPUTE RESOLUTION

39. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Agreement. EPA and Settling Respondents shall attempt to resolve any disagreements concerning this Agreement expeditiously and informally. If EPA contends that Settling Respondents are in violation of this Agreement, EPA shall notify Settling Respondents in writing, setting forth the basis for its position. Settling Respondents may dispute EPA's position pursuant Section XV, Paragraphs 40 and 41.
40. If Settling Respondents dispute EPA's position with respect to Settling Respondents' compliance with this Agreement or object to any EPA action taken pursuant to this Agreement, including billings for Response Costs, Settling Respondents shall notify EPA in writing of their position unless the dispute has been resolved informally. EPA may reply, in writing, to Settling Respondents position within thirty (30) days of receipt of Settling Respondents' notice. EPA and Settling Respondents shall have thirty (30) days from EPA's receipt of Settling Respondents' written statement of position to resolve the dispute through formal negotiations (the "**Negotiation Period**"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted orally but must be confirmed in writing.
41. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Assistant Director level or higher will review the dispute on the basis of the Parties' written statements of position and issue a written

decision on the dispute to Settling Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Agreement. Settling Respondents' obligations under this Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Settling Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVI. PARTIES BOUND

42. This Agreement shall apply to and be binding upon the United States, and shall apply to and be binding upon the Settling Respondents, their officers, directors, and employees. The United States' Covenant Not to Sue in Section XII and Contribution Protection in Section XXV shall apply to Settling Respondents' officers, directors, or employees, to the extent that the alleged liability of the officer, director, or employee is based on its status and in its capacity as an officer, director, or employee of a Settling Respondent, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

XVII. DISCLAIMER

43. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XVIII. DOCUMENT RETENTION

44. The Settling Respondents agree to retain and make available to EPA all business and operating records, contracts, Site studies and investigations, and documents relating to the Work to be performed at the Property pursuant to Section V of this Agreement, for at least ten (10) years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten (10) years, the Settling Respondents shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XIX. PAYMENT OF COSTS

45. If the Settling Respondents fail to comply with the terms of this Agreement, including, but not limited to, the provisions of Section VI (Payment), or Section V (Work to be Performed) of this Agreement, they shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XX. NOTICES AND SUBMISSIONS

46. Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a "notice") required or permitted under this Agreement must be in writing and sent by express mail or express courier with advice of receipt requested as set forth below. Notice shall be simultaneously sent via e-mail or equivalent electronic means. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees. The initial addresses for notice are as follows:

For notice to EPA:

Lisa Hanusiak
Remedial Project Manager
Superfund Division, Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street (SFD 7-3)
San Francisco, California 94105
Direct Dial: (415) 972-3152
Fax: (415) 947-3526
Email: hanusiak.lisa@epa.gov

David Wood
Management and Technical Services Division, Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street (MTS 4)
San Francisco, California 94105
Direct Dial: (415) 972-3709
Fax: (415) 947-3356
Email: Wood.David@epa.gov

In each instance as to EPA,
with a copy to:

Marie Rongone
U.S. Environmental Protection Agency, Region IX
Office of the Regional Counsel
75 Hawthorne Street, ORC-3
San Francisco, California 94105
Direct Dial: (415) 972-3891
Fax: (415) 947-3570
Email: Rongone.Marie@epa.gov

For notice to Settling Respondents

GGRI:

Glendale/Goodwin Realty I, LLC
c/o Ralphs Grocery Company
Attention: Legal Department
1100 West Artesia Boulevard
Compton, California 90220

Kroger:

The Kroger Co.
Attention: Law Department
1014 Vine Street
Cincinnati, Ohio, 45202-1100

RGC:

Ralphs Grocery Company
Attention: Legal Department
1100 West Artesia Boulevard
Compton, California 90220

In each instance as to
Settling Respondents, with
a copy to:

Zuber & Taillieu LLP
777 S. Figueroa Street, 37th Floor
Los Angeles, CA 90017
Attention: Patrick Del Duca, Esq.
E-mail: pdelduca@ztllp.com

LARWQCB:

Los Angeles Regional Water Quality Control Board
Attention: Executive Officer
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

With a copy to:

Jennifer L. Fordyce, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814

XXI. FINANCIAL RESPONSIBILITY

47. The Parties agree and acknowledge that, in the event Settling Respondents cease implementation of or otherwise fail to complete the Work in accordance with this Agreement, Settling Respondents shall ensure that EPA is held harmless from or reimbursed for all costs required for completion of the Work. For these purposes, Settling Respondents shall establish and maintain Financial Responsibility for the benefit of EPA in the amount of **\$3,412,950** (hereinafter "**Estimated Cost of the Work**") in one or more of the following forms, each of which must be satisfactory in form and substance to EPA:

- a. A surety bond unconditionally guaranteeing payment and/or performance of the Remedial Action Plan;
- b. One or more irrevocable letters of credit, payable to or at the direction of EPA;
- c. A trust fund established for the benefit of EPA;
- d. A policy of insurance that provides EPA with acceptable rights as a beneficiary;
- e. A demonstration by Kroger that it meets the financial test criteria of 40 C.F.R. §264.143(f)(1) with respect to the Estimated Cost of the Work, accomplished by its submittal within sixty (60) days of the Effective Date of this Agreement of the certification contemplated by Appendix V to this Agreement, together with its most recent SEC Form 10-K filing and the Independent Accountants' Report on Applying Agreed-Upon Procedures in the form of Appendix VI followed by Kroger's submittal of updates of the foregoing within ninety (90) days of the close of each calendar year. Should Kroger be unable or unwilling to continue to make the demonstration here contemplated, Settling Respondents must provide notice, within ninety (90) days of the end of the calendar year, of intent to establish alternate financial assurance as specified in Paragraph 47. Settling Respondents must provide the alternate financial assurance within one hundred and twenty (120) days of the end of such year. EPA may, based on a reasonable belief that Kroger may no longer meet the requirements of this Paragraph (47)(e), require confirmatory reports of financial condition at any time from Kroger. If EPA finds, on the basis of such reports or other information, that Kroger no longer meets the requirements of this Paragraph (47)(e), Settling Respondents must provide alternate financial assurance as specified in this Section within thirty (30) days after notice of such a finding. In the event that EPA determines at any time that a performance guarantee provided by any Settling Respondent pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Settling Respondent becomes aware of information indicating that a performance guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Respondents, within thirty (30) days of receipt of notice of EPA's determination or, as the case may be, within thirty (30) days of any Settling Respondent becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of performance guarantee listed in Paragraph 47 that satisfies all requirements set forth in this Section XIII; provided, however, that if no Settling Respondent can obtain such revised or alternative form of performance guarantee within such 30-day period, and provided further that the Settling Respondents shall have commenced to obtain such revised or alternative form of performance guarantee within such 30-day period, and thereafter diligently proceeds to obtain the same, EPA shall extend such period for such time as is reasonably necessary for the Settling Respondents in the exercise of due diligence to obtain such revised or alternative form of performance guarantee, such additional period not to exceed thirty (30) days; or

- f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of Settling Respondents, or (ii) a company that has a “substantial business relationship” (as defined in 40 C.F.R. §264.141(h)) with Settling Respondents; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

Settling Respondents have selected, and EPA has approved, as an initial Financial Responsibility mechanism, a demonstration of satisfaction of financial test criteria pursuant to Paragraph 47(e), with respect to Settling Respondents. Delivery of a certification in the form of Appendix V together with the appropriate Settling Respondent’s most recent SEC Form 10-K filing and the Independent Accountants’ Report on Applying Agreed-Upon Procedures in the form of Appendix VI will demonstrate compliance with such mechanism. Subject to EPA approval, Settling Respondents may substitute alternate financial assurance under Paragraph 47 by providing ninety (90) days notice to EPA of intent to change financial assurance mechanism.

48. The Estimated Cost of Work shall initially be \$3,412,950, and shall be reduced as set forth as the Milestones set forth here are completed. “Completion,” for purposes of this Paragraph, shall mean that both LARWQCB and EPA agree that the milestone has been completed in accordance with all applicable requirements. If at any time, EPA determines upon completion of a milestone that the remaining financial assurances are, or will be, insufficient to complete the remaining work if reduced further, EPA may instruct Settling Respondents not to reduce the financial assurance further without written EPA approval.

Milestones	Estimated Cost of Milestone Completion	Guarantee Amount Remaining Upon Milestone Completion
(1) Well Abandonment and Installation Work Plan	\$93,400	\$3,319,550
(2) Hazardous Building Material Abatement and Building Demolition Plan	\$371,769	\$2,947,781
(3) LDA/ISCR and Cap Installation Plan	\$2,023,881	\$923,900
(4) SVE Pilot Testing/O&M/Rebound Testing	\$659,500	\$264,400
(5) Post-Remedial Fieldwork and Risk Assessment	\$186,900	\$77,500
(6) Post-Remedial Closeout Documents	\$77,500	\$0

XXII. STIPULATED PENALTIES

49. Settling Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Section XXII, Paragraphs 50(a) and 51 for failure to comply with the requirements of this Agreement specified below, unless excused under Section XXIII (Force Majeure). "Compliance" by Settling Respondents shall include completion of the activities under this Agreement or any work plan or other plan approved under this Agreement identified below in accordance with all applicable requirements of law, this Agreement, and any plans or other documents approved by EPA or LARWQCB pursuant to this Agreement and within the specified time schedules established by and approved under this Agreement.

50. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance, as "compliance" is defined in Paragraph 49, with respect to deliverables identified in Paragraph 50.b:

<u>Penalty</u>	<u>Per Violation</u>	<u>Per Day</u>	<u>Period of</u>
<u>Noncompliance</u>			

\$1000	1st through 14th day
\$2500	15th through 30th day
\$5000	31st day and beyond

b. Compliance Milestones:

- i. Well Abandonment and Installation Work Plan;
- ii. Hazardous Building Materials Abatement and Building Demolition Work Plan;
- iii. Large Diameter Auger/In-Situ Chemical Reduction (LDA/ISCR) Pilot Test Work Plan;
- iv. SVE Pilot Testing/O&M/Rebound Testing Work Plan;
- v. Cap Installation and Maintenance Plan
- vi. LDA/ISCR Field Pilot Test Letter Report and Closeout Report
- vii. Post-Remedial Action Fieldwork and Risk Assessment Work Plan;
- viii. SVE Closeout Documentation;
- ix. Post-Remedial Closeout Documents; and

- x. Any work plan required in response to EPA notice of deficiency under Section X, Paragraph 30.

51. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports:

<u>Penalty</u>	<u>Per Violation</u>	<u>Per Day</u>	<u>Period of Noncompliance</u>
\$500			1st through 14th day
\$1000			15th through 30th day
\$2500			31st day and beyond

52. In the event that EPA assumes performance of a portion or all of the Work pursuant to Section XIII (Reservation of Rights by United States), Settling Respondents shall be liable for a stipulated penalty in the amount of 50% of the cost of the Work performed by EPA, in addition to EPA's costs of performing the Work.
53. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section V (Work to be Performed), or a notice of deficiency pursuant to Paragraph 30, during the period, if any, beginning on the thirty-first (31st) day after EPA's receipt of such submission until the date that EPA notifies Settling Respondents of any deficiency; and (2) with respect to a decision by the EPA Management Official at the Assistant Director or higher, under Section XV, Paragraph 41 (Dispute Resolution), during the period, if any, beginning on the twenty-first (21st) day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.
54. Following EPA's determination that Settling Respondents have failed to comply with a requirement of this Agreement, EPA may give Settling Respondents written notification of the failure and describe the noncompliance. EPA may send Settling Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Settling Respondents of a violation.
55. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Settling Respondents' receipt from EPA of a demand for payment of the penalties, unless Settling Respondents invokes the dispute resolution procedures under Section XV (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

EPA
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

shall indicate that the payment is for stipulated penalties, and shall reference the name and address of Settling Respondents, the Site name, the EPA Region and Site/Spill ID Number 09SF, and the EPA Docket Number 2012-01. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to Lisa Hanusiak of EPA as provided in Section XX.

56. The payment of penalties shall not alter in any way Settling Respondents' obligation to complete performance of the Work required under this Agreement.
57. Penalties shall continue to accrue during any dispute resolution period, except as provided in Section XXII, Paragraph 53 above, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision.
58. If Settling Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Settling Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Section XXII, Paragraph 54. Nothing in this Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Settling Respondents' violation of this Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Agreement.

XXIII. FORCE MAJEURE

59. Settling Respondents agree to perform all requirements of this Agreement within the time limits established under this Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Settling Respondents, or of any entity controlled by Settling Respondents, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Agreement despite Settling Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.
60. If any event occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by a *force majeure* event, Settling Respondents shall notify EPA orally within twenty-four (24) hours of when Settling Respondents first knew that the event might cause a delay. Within two (2) days thereafter, Settling Respondents shall provide to EPA in writing an explanation and description of the

reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Respondents' rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Settling Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Settling Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Settling Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Settling Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

61. If Settling Respondents elect to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), Settling Respondents shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a *force majeure* event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Respondents complied with the requirements of Section XXIII, Paragraphs 59 and 60 above. If Settling Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Settling Respondents of the affected obligation of this Agreement.

XXIV. EFFECTIVE DATE

62. The Effective Date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondents that EPA has fully executed the Agreement after review of and response to any public comments received, or the date that one or more of Settling Respondents takes title to the Property, whichever occurs later.

XXV. CONTRIBUTION PROTECTION

63. With regard to claims for contribution against Settling Respondents, the Parties hereto agree that this Agreement is an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Respondents are entitled to protection from contribution actions or claims as provided by CERCLA § 113(f)(2) and 122(h)(4), 42 U.S.C. §§ 9613(f)(2), 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person with respect to the Existing Contamination.

64. The Settling Respondents agree that with respect to any suit or claim for contribution brought by them, or any of them, for matters related to this Agreement, they will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.
65. The Settling Respondents also agree that with respect to any suit or claim for contribution brought against them, or any of them, for matters related to this Agreement, they will notify the United States in writing within ten (10) days of service of the complaint on them.

XXVI. APPENDICES

66. Appendix I shall mean the description of the Property which is the subject of this Agreement.
67. Appendix II shall mean the maps depicting the Excella Plating site within San Fernando Area 2 Superfund Site, there set forth.
68. Appendix III shall mean the state of California Regional Water Quality Control Board-Los Angeles Region's letter of conditional approval of the Remedial Action Plan set forth as of the Agreement.
69. Appendix IV shall mean the Remedial Action Plan there set forth.
70. Appendix V shall mean the form of declaration corresponding to the form of financial assurance selected by Settling Respondents.
71. Appendix VI shall mean the CERCLA Financial Assurance Financial Test: Sample CPA Report (for Test Alternative 2).
72. Appendix VII shall mean Exhibit E to the LARWQCB PPA.

XXVII. PUBLIC COMMENT

73. This Agreement shall be subject to a thirty-day (30-day) public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: Kathleen Salyer Date: 11/14/11
Name: Kathleen Salyer
Assistant Director, Superfund Division,
Region IX

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

By: _____ Date: _____
Name: Ellen Mahan
Deputy Chief
Environmental Enforcement Section U.S.
Department of Justice

SETTLING RESPONDENTS

Glendale/Goodwin Realty I, LLC,
an Ohio limited liability company

By: _____ Date: _____
Name: _____
Title: _____

The Kroger Co., an Ohio corporation

By: _____ Date: _____
Name: _____
Title: _____

Ralphs Grocery Company, an Ohio
corporation

By: _____ Date: _____
Name: _____
Title: _____

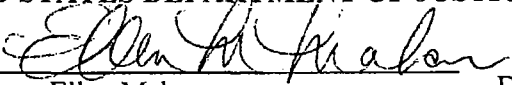
IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: _____
Name: Kathleen Salyer
Assistant Director, Superfund Division,
Region IX

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

By:  Date: 10-28-2010
Name: Ellen Mahan
Deputy Chief
Environmental Enforcement Section U.S.
Department of Justice

SETTLING RESPONDENTS

Glendale/Goodwin Realty I, LLC,
an Ohio limited liability company

By: _____ Date: _____
Name:
Title:

The Kroger Co., an Ohio corporation

By: _____ Date: _____
Name:
Title:

Ralphs Grocery Company, an Ohio
corporation

By: _____ Date: _____
Name:
Title:

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: _____
Name: Kathleen Salyer
Assistant Director, Superfund Division,
Region IX

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

By: _____ Date: _____
Name: Ellen Mahan
Deputy Chief
Environmental Enforcement Section U.S.
Department of Justice

SETTLING RESPONDENTS

Glendale/Goodwin Realty I, LLC,

an Ohio limited liability company

By: Ralphs Grocery Company, an Ohio corporation and its sole member

By: Paul Heldman Date: 10/31/11
Name: Paul Heldman
Title: Vice President and Secretary

The Kroger Co., an Ohio corporation

By: Paul Heldman Date: 10/31/11
Name: Paul Heldman
Title: Executive Vice President

Ralphs Grocery Company, an Ohio corporation

By: Paul Heldman Date: 10/31/11
Name: Paul Heldman
Title: Vice President and Secretary



Appendix I Legal Description of the Property

The land situated in the City of Los Angeles, County of Los Angeles, State of California, as follows:

THAT PORTION OF LOT 16 OF THE RIVERDALE TRACT, AS PER MAP RECORDED IN BOOK 54 PAGE 41, MISCELLANEOUS RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

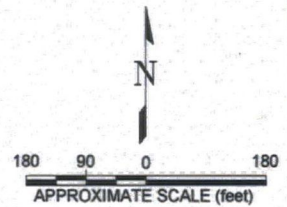
BEGINNING AT A POINT IN THE NORTHERLY LINE OF GOODWIN AVENUE (FORMERLY OAK DRIVE), AS NOW ESTABLISHED 50 FEET WIDE, AS SHOWN ON MAP OF TRACT NO. 644, AS PER MAP RECORDED IN BOOK 15 PAGES 198 AND 199 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DISTANT THEREON WEST PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 16, 555.04 FEET FROM THE EASTERLY LINE OF SAID LOT 16, SAID EASTERLY LINE BEING THE SOUTHWESTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY'S RIGHT OF WAY; THENCE FROM SAID POINT OF BEGINNING NORTH 22° 50' WEST PARALLEL WITH SAID EASTERLY LINE OF SAID LOT AND SAID RIGHT OF WAY LINE 431.97 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF THAT CERTAIN 17 FOOT STRIP OF LAND CONVEYED TO SAID SOUTHERN PACIFIC RAILROAD COMPANY BY DEED RECORDED IN BOOK 4036 PAGE 102, OFFICIAL RECORDS OF SAID COUNTY; THENCE WEST ALONG SAID SOUTHERLY LINE 109 FEET; THENCE SOUTH 22° 50' EAST PARALLEL WITH SAID EASTERLY LINE OF SAID LOT AND SAID SOUTHWESTERLY RIGHT OF WAY LINE 431.97 FEET, MORE OR LESS, TO SAID NORTHERLY LINE OF GOODWIN AVENUE; THENCE EAST THEREON 109 FEET TO THE POINT OF BEGINNING.

Appendix II -- Maps



EXPLANATION

- RALPHS DISTRIBUTION CENTER
- THE SPIRITO FAMILY TRUST PARCEL



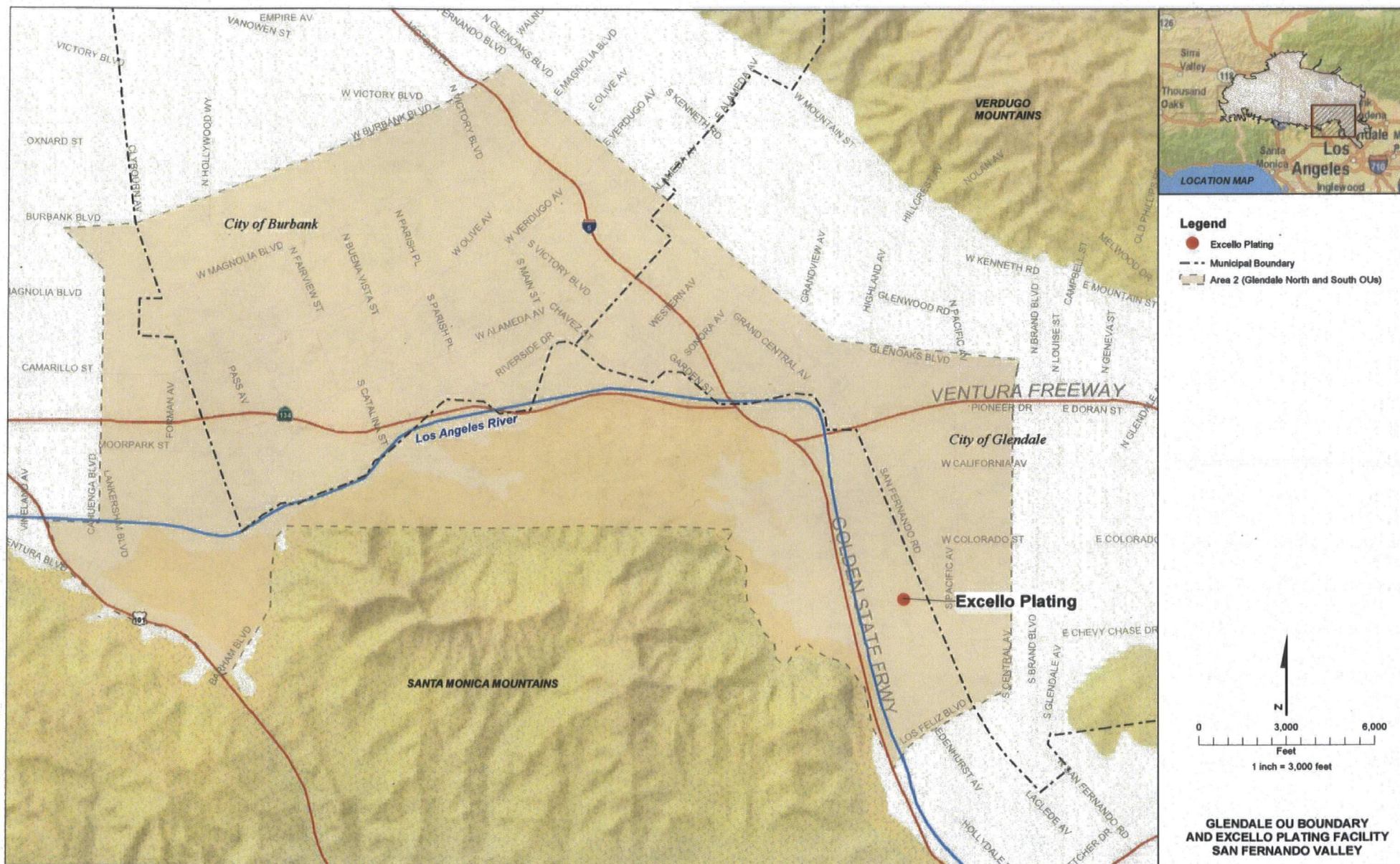
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PROJECT NO.	101942
DRAWN:	5/2011
DRAWN BY:	MRG
CHECKED BY:	JD
FILE NAME:	101942p1_SP.dwg

SITE PLAN

PLATE
1





Appendix III Conditional Approval Letter
California Regional Water Quality Control Board
Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

November 1, 2010

Ms. Alice C. Clarno, EA, ATA
The Spirito Family Trust
1801 South Myrtle Avenue, Suite H,
Monrovia, California 91016-4800

CONDITIONAL APPROVAL OF RALPHS REMEDIAL ACTION PLAN - CLEANUP AND ABATEMENT ORDER NO. R4-2003-0038-R FOR EXCELLO PLATING COMPANY INC., 4057 GOODWIN AVENUE, LOS ANGELES, CALIFORNIA (SITE ID NO. 2040209; FILE NO. 113.5243)

Dear Ms. Clarno:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the public agency with primary responsibility for the protection of groundwater and surface water quality for all beneficial uses within major portions of Los Angeles and Ventura Counties, including the referenced site.

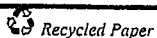
On September 30, 2010 the Regional Board received a technical report [Remedial Action Plan (RAP)] entitled "*Remedial Action Plan The Spirito Family Trust Parcel, 4057 and 4059 Goodwin Avenue, (Including The Former Excello Plating Co., Inc., Facility), City of Los Angeles, County of Los Angeles, California.*" The RAP was prepared and submitted by Kleinfelder (Kleinfelder), the environmental consultant to the Ralphs Grocery Company (Ralphs).

The RAP was reviewed by the Regional Board and the United States Environmental Protection Agency Region IX (USEPA) and a list of comments was provided to you in a letter dated April 29, 2010. On July 14, 2010, Kleinfelder submitted a "draft" matrix table of responses to this list of comments. And on July 29, 2010 and August 24, 2010 conference calls were conducted between the Regional Board, USEPA, and Kleinfelder to resolve the list of comments. All comments were resolved and on September 16, 2010 the final matrix table of responses was submitted to the Regional Board and USEPA. This final matrix table was approved by the Regional Board and USEPA; therefore the final RAP was submitted on September 30, 2010.

Based on the Regional Board's and USEPA's review the final RAP is conditionally approved provided the work is completed as specified in the final RAP. You are required to submit a final report to the Regional Board to summarize the results and findings from the implementation of the RAP by **January 22, 2014**, which is the date proposed in the schedule depicted in the final RAP.

Regional Board staff must receive a 1-week notification prior to the commencement of field activities in order to provide regulatory oversight.

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.



Appendix III Conditional Approval Letter
California Regional Water Quality Control Board
Los Angeles Region



Linda S. Adams
Agency Secretary

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320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

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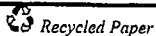
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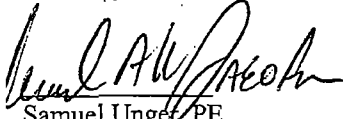
Ms. Alice C. Clarno
The Spirito Family Trust

- 3 -

November 1, 2010

If you have any questions regarding this matter, please call Mr. Larry Moore at (213) 576-6730 or email at lmoores@waterboards.ca.gov or Jeffrey Hu at (213) 576-6736 or email at ghu@waterboards.ca.gov.

Sincerely,



Samuel Ungel, PE
Executive Officer

cc: Ms. Jennifer Fordyce, Office of Chief Counsel, State Water Resources Control Board
Ms. Rita Kimat, State Department of Toxic Substances Control, Chatsworth Office
Mr. Jeff OKeefe, California Department of Public Health
Ms. Kelly Manheimer, USEPA Superfund Division, Region IX, San Francisco
Mr. Fred Schaufler, USEPA Superfund Division, Region IX, San Francisco
Mr. Thomas Butler, USEPA, Superfund Division, Region IX, San Francisco
Ms. Lisa Hanusiak, USEPA Superfund Division, Region IX, Los Angeles
Mr. Robert McKinney, Los Angeles Department of Water & Power
Mr. Thomas Erb, Los Angeles Department of Water & Power
Mr. Leighton Fong, City of Glendale
Mr. Bill Mace, City of Burbank Water Supply Department
Ms. Patricia Bilgin, Los Angeles City Attorney Office
Mr. Vaughn Minassian, Los Angeles City Attorney Office
Mr. Daniel Klier, Law Offices of Daniel Klier, Esq.
Mr. Peter Niemiec, Law Offices of Peter Niemiec, Esq.
Mr. Patrick Del Duca, Zuber & Taillieu LLP

California Environmental Protection Agency



Recycled Paper

Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

Appendix IV Remedial Action Plan approved by LARWQCB

Executive Summary Only Included Here Due to Size of Document

Complete document: http://www.swrcb.ca.gov/losangeles/water_issues/programs/remediation/



**REMEDIAL ACTION PLAN
THE SPIRITO FAMILY TRUST PARCEL
4057 AND 4059 GOODWIN AVENUE
(INCLUDING THE FORMER EXCELLO
PLATING CO., INC. FACILITY)
CITY OF LOS ANGELES,
COUNTY OF LOS ANGELES, CALIFORNIA**

**LARWQCB Reference:
Excello Plating Co., Inc.
CAO No. R4-2003-0038-R
LARWQCB Site ID No. 2040209
LARWQCB File No. 113.5243**

Prepared by:

**KLEINFELDER WEST, INC.
620 West 16th Street, Unit F
Long Beach, California 90813**

Kleinfelder Project No. 101942


September 30, 2010



**REMEDIAL ACTION PLAN
THE SPIRITO FAMILY TRUST PARCEL
4057 AND 4059 GOODWIN AVENUE
(INCLUDING THE FORMER EXCELLO PLATING CO., INC. FACILITY)
CITY OF LOS ANGELES,
COUNTY OF LOS ANGELES, CALIFORNIA**


Kleinfelder Project No. 101942


Prepared by:


John Donatucci, P.E.
Senior Engineer


Michael A. Counte, R.E.A., R.B.P.
Environmental Group Manager

Reviewed by:


William Golightly, P.E.
Senior Principal Engineer



KLEINFELDER WEST, INC.
620 West 16th Street, Unit F
Long Beach, California 90813

September 30, 2010

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Appendix M	Bench-Scale Testing Report
Appendix N	Calculation of Treated Cr ⁶⁺ -Impacted Soil Mass
Appendix O	Case Studies
Appendix P	Cost Estimate Summaries
Appendix Q	General Order R4-2007-0019
Appendix R	Transportation and Disposal Plan
Appendix S	Initial Draft Health and Safety Plan
Appendix T	Spill Contingency Plan
Appendix U	Flowcharts
Appendix V	Conceptual Remedial Action Plan Implementation Schedule

1. EXECUTIVE SUMMARY

This Remedial Action Plan (RAP) includes an assessment of various potential remedial alternatives, and provides a recommended approach to remediate certain volatile organic compounds (VOCs) and metals designated as chemicals of concern (COCs) in soil beneath the parcel located at 4057 and 4059 Goodwin Avenue, in the City of Los Angeles, Los Angeles County, California (the "Site"), as more fully described in the legal description in Appendix A. This RAP does not address remediation of groundwater.

The primary objectives of this RAP are to:

- establish COCs for the Site soils and soil vapor;
- propose soil and soil vapor cleanup goals; and
- identify preferred alternatives for remediation of COCs in the Site soil and soil vapor.

Kleinfelder prepared a *Draft RAP* (Kleinfelder, 2010), and submitted it to the Los Angeles Regional Water Quality Control Board (LARWQCB) and other regulatory agencies, including the United States Environmental Protection Agency (US EPA) Region 9, on behalf of The Spirito Family Trust, owner of the Site. The LARWQCB and other regulatory agencies reviewed the *Draft RAP* and provided comments that were considered in the preparation of this RAP. Agency comments and Kleinfelder responses to them are included as Appendix B.

A plating facility operated by the Excello Plating Co., Inc. (Excello), which is no longer in business, was located on the southern portion of the Site (4057 Goodwin Avenue). An older plating facility was previously located on the rear, northern portion of the Site (4059 Goodwin Avenue). The older facility was operated by the Plating Engineering Company, Inc. (PECI) from at least 1946, but was destroyed by a fire in 1955. Operations at these two plating facilities resulted in the release of VOCs and metals to vadose zone soil beneath the Site, as documented by past assessments. Groundwater beneath the Site is also impacted with some of the VOCs and metals present in Site vadose zone soil. Metals-contaminated groundwater (primarily with hexavalent

chromium [Cr^{6+}]) has affected US EPA extraction well GS-3, which is one of four extraction wells operating near Goodwin Avenue as part of the regional remedy for VOC-impacted groundwater in the Glendale South Operable Unit (GSOU) of the San Fernando Valley Superfund Site.

The Spirito Family Trust is the present owner of the Site and has been deemed by the LARWQCB to be the Responsible Party for Site cleanup, as indicated in a September 25, 2007 revised Cleanup and Abatement Order (CAO) No. R4-2003-0038-R, prepared by LARWQCB.

The Spirito Family Trust has reported that it has insufficient financial assets to pay for a Site cleanup that will meet regulatory requirements. A prospective purchaser of the Site has indicated a willingness to perform a regulatory agency-approved remediation of vadose-zone soil beneath the Site to accommodate such prospective purchaser's use of the Site's surface, providing that such a cleanup can be performed on acceptable terms. The prospective purchaser would intend to use the Site for a driveway and apron for parking, maneuvering, and loading and unloading trucks, and possibly a commercial warehouse.

The goal of the RAP is to prevent, by achieving proposed cleanup goals, future migration of the COCs present in Site vadose-zone soil to underlying groundwater. This RAP is not intended to address any groundwater contamination. In particular, it is not intended to address the regional VOC and Cr^{6+} groundwater contamination. The US EPA is addressing such contamination through Federal Superfund proceedings that include the GSOU of the San Fernando Valley Superfund Site.

Kleinfelder selected a remedial approach for the Site on the basis of evaluations of overall effectiveness, implementability, and cost-effectiveness. Its evaluation considered the Site's intended use. The inorganic COC addressed by this RAP is Cr^{6+} . The organic COCs addressed by the RAP are tetrachloroethene (PCE) and trichloroethene (TCE).

Based on the future intended use of the Site, complete exposure pathways and associated receptors identified for evaluation include the following:

- soil ingestion, dermal contact with soil, and dust inhalation – on-Site workers employed on the Site after redevelopment (e.g., landscape maintenance workers and subsurface utility workers);
- groundwater ingestion – municipal water customers; and
- inhalation of vapors – on-Site workers working in enclosed structures on the Site.

Potentially-complete exposure pathways and associated receptors identified for evaluation include the following:

- soil ingestion, dermal contact with soil, and dust inhalation – construction workers during implementation of the RAP and Site redevelopment;
- inhalation of vapors – construction workers and nearby residents during and after implementation of the RAP; and
- dust inhalation – nearby residents during implementation of the RAP and Site redevelopment.

The Site-specific cleanup goal here employed for Cr^{6+} in soil is 5.6 milligrams per kilogram (mg/kg), which corresponds to the industrial Regional Screening Level (RSL) for Cr^{6+} in soil. This goal was based on agency input, following calculation in the *Draft RAP* of a Site-specific cleanup goal for Cr^{6+} in soil of 7.4 mg/kg, pursuant to US EPA's Soil Screening Guidance (SSG) (US EPA, 1996a; Kleinfelder, 2010). The soil vapor cleanup goals for PCE and TCE in the shallow vadose zone are the commercial/industrial California Human Health Screening Levels (CHHSLs), as requested by LARWQCB. These cleanup goals are 0.603 micrograms per liter ($\mu\text{g/L}$) and 1.77 $\mu\text{g/L}$ for PCE and TCE, respectively.

The remedial approach recommended in this RAP includes *in-situ* chemical reduction (ISCR) using calcium polysulfide (CaSx). The CaSx will be mixed into the soil using a large diameter auger (LDA). The combined process is referred to as LDA/ISCR. This process will be used to reduce Cr^{6+} to trivalent chromium (Cr^{3+}) to a depth of 35 feet below ground surface (bgs), thereby mitigating the mobility and toxicity of this COC. The LARWQCB has informed Kleinfelder that General Waste Discharge Requirements (WDR) Permit (R4-2007-0019), which includes CaSx as a pre-approved injectant, will be the permit under which LDA/ISCR remedial activities and post-remedial monitoring, will be performed.

Based on the most recent (July 2010) Site monitoring data presently available to Kleinfelder, the depth to groundwater beneath the Site is approximately 46 to 48 feet bgs. Depth to the water table beneath the Site has been consistent with data collected beginning in 2006. According to the California Geological Survey, available historic data indicate the historic high groundwater depth in the immediate Site vicinity is estimated to be approximately 36 feet bgs. To address the proximity of COCs to groundwater, and to mitigate the likelihood of CaSx entering groundwater, a stabilizing agent (i.e., cement) will be added to the soil to a depth of 45 feet bgs to lower the mobility of the Cr^{3+} and residual Cr^{6+} in Site soil. More specifically, from a depth of 35 feet bgs to the groundwater table, COCs in soil will be stabilized in an approximately 10-foot thick, cemented, non-CaSx-treatment buffer zone. Avoiding treatment of soil with CaSx in the buffer zone reduces concern regarding potential leaching and transport of CaSx to groundwater, and thus potential effect on extraction well GS-3, which extracts groundwater through its well screen set between depths of 84 and 174 feet bgs.

An engineered cap will be installed subsequent to completion of LDA/ISCR and cement stabilization remedial activities. The purpose of the engineered cap is to provide surface cover above the buffer zone where only cement stabilization will be used to treat the Cr^{6+} -impacted soil. The buffer zone will be installed between 35 and 45 bgs, within the 5.6 mg/kg Cr^{6+} isocontour (see Plate 4D). The cap will be designed to overlap this zone by as much as 50 feet on all sides.

Soil vapor extraction (SVE) is proposed as the presumptive remedy for mitigation of PCE and TCE in Site vadose-zone soils. PCE and TCE will be removed from the subsurface to the practical limits of the applicable SVE technology. A soil vapor survey will be conducted in the shallow vadose zone following shut down of the SVE system. Results of the soil vapor survey will be used to conduct a human health risk assessment (HHRA) for the intended Site use. A passive or active vapor mitigation system, if necessary, will be considered based on results of the HHRA and future Site use.

Implementation of these remedial actions will be associated with a deed restriction against the Site that limits future property development to commercial and industrial uses. Specifically, as a condition to the transfer of the ownership of the Site, a deed restriction against the Site, referred to as a Covenant and Environmental Restriction on Property (CERP), that corresponds to the restrictions attached as Appendix C, will be recorded against the Site after approval and execution by the LARWQCB's Executive Officer, simultaneously with the acquisition of title to the Site.

Two on-Site groundwater monitoring wells (MW2 and MW3) will be abandoned and re-installed as part of the RAP implementation, to assess and monitor effectiveness of the proposed remedial approach. Well MW-2R will be re-installed on Site, directly downgradient of the treatment area, between extraction well GS-3 and the treatment area. Well MW3R will also be re-installed on Site, crossgradient of the treatment area. These wells will be used for monitoring during RAP implementation. After RAP implementation and WDR permit monitoring are completed, on- and off-Site wells associated with the Site will be abandoned.

Following RAP approval by LARWQCB, field pilot testing for LDA/ISCR will be performed to provide data for the final design of the remedial action. A pilot testing workplan will be prepared to address the specific activities to be performed, and will be submitted to LARWQCB prior to execution of pilot testing activities.

The building currently at the Site will be demolished as part of implementation of the RAP. It will be necessary to perform a hazardous building material survey (HBMS) and properly abate hazardous building materials, if identified, prior to building demolition. A workplan will be submitted for LARWQCB approval of the specific proposed HBMS, hazardous building materials abatement, and building demolition activities, prior to their performance. If impacted soils are encountered in shallow soils during demolition of the building, additional soil samples will be collected and analyzed to complement the Site's currently available assessment data and in support of the remedial action design.

Appendix V - Form of Declaration re: Financial Assurance

Janie Thomas
Financial Manager
Management and Technical Services Division, Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street (MRS 4)
San Francisco, California 94105

Ladies and Gentlemen:

I am the chief financial officer of The Kroger Co., an Ohio corporation ("**Kroger**"), the address of which is The Kroger Co., Attention: Law Department, 1014 Vine Street, Cincinnati, Ohio, 45202-1100. This letter is in support of the use by Kroger of the financial test to demonstrate the financial assurance contemplated by Section XXI of the Agreement, Order on Consent and Covenant Not to Sue ("**Agreement**") made and entered into by and between the United States Environmental Protection Agency ("**EPA**"), Glendale/Goodwin Realty I, LLC, an Ohio limited liability company ("**GGRI**"), The Kroger Co., an Ohio corporation ("**Kroger**"), and Ralphs Grocery Company, an Ohio corporation ("**RGC**"). The Agreement pertains to the real property (the "**Property**") described in Appendix I (Legal Description of the Property) to the Agreement, located in the City of Los Angeles, County of Los Angeles, state of California, bearing the street addresses 4057 and 4059 Goodwin Avenue and referenced as Assessor Parcel Number 5593-020-020.

1. The current Estimated Cost of the Work is: _____.
2. Kroger is required to file a Form 10K with the United States Securities and Exchange Commission for the latest fiscal year.
3. The fiscal year of this firm ends on [**insert month, day**]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [**insert date**].
4. Kroger is using "Alternative II" as described below and in 40 C.F.R. §§ 264.143(f) and 264.151(h).
5. During the period to which this Declaration re: Financial Assurance pertains, I certify that Kroger is not providing financial assurance through a Kroger-based financial test or guarantee, in respect of any remediation cost estimates pursuant to CERCLA, RCRA, Underground Injection Control ("UIC") facilities under 40 CFR part 144, Underground Storage Tank ("UST") facilities under 40 CFR part 280, and Polychlorinated Biphenyl ("PCB") storage facilities under 40 CFR part 761, as to which an analogous declaration by the chief financial officer of Kroger is required.

ALTERNATIVE II

1. Current Guarantee Amount \$ _____
2. Current bond rating of most recent issuance of Kroger and name of rating service _____
3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth [if any portion of the Guarantee Amount is included in
“total liabilities” on your firm’s financial statements, you may add the amount of
that portion to this line] \$ _____

*6. Total assets in U.S. (required only if less than 90% of firm’s assets are located in
the U.S.) \$ _____

7. Is line 5 at least \$10 million? [Yes/No]

8. Is line 5 at least 6 times line 1? [Yes/No]

*9. Are at least 90% of firm’s assets located in the U.S.? If not, complete line 10 [Yes/No]

10. Is line 6 at least 6 times line 1? [Yes/No]

[Signature], [Name], [Title], [Date] , Notary Block

Appendix VI

CERCLA Financial Assurance Financial Test: Sample CPA Report (for Test Alternative 2)

[CPA Letterhead]

Independent Accountants' Report on Applying Agreed-Upon Procedures

To the Board of Directors and Management of The Kroger Co., an Ohio corporation ("Kroger"):

We have performed the procedures outlined below, which were agreed to by Kroger, to assist Kroger in confirming selected financial data contained in the attached letter from [____], Kroger's Chief Financial Officer, dated [____], to Janie Thomas, Financial Manager, Management and Technical Services Division, Region IX, U.S. Environmental Protection Agency (the "CFO Letter"). We have been advised by Kroger that the CFO Letter has been or will be submitted to the United States Environmental Protection Agency ("EPA") in support of Kroger's use of a financial test to demonstrate financial assurance for Kroger's obligations under Section XXI of the Agreement, Order on Consent and Covenant Not to Sue ("Agreement") made and entered into by and between EPA, Glendale/Goodwin Realty I, LLC, an Ohio limited liability company ("GGRI"), Kroger, and Ralphs Grocery Company, an Ohio corporation ("RGC"). The procedures outlined below were performed solely to assist Kroger in complying with the financial assurance requirements contained in the Agreement.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures we performed and our associated findings are as follows:

1. We confirm that we have audited the consolidated financial statements of Kroger as of and for the fiscal year ended [December 31, 201_] in accordance with U.S. generally accepted accounting principles (such audited, consolidated financial statements, the "Audited Financials"). Our report dated [____], with respect thereto, is included in Kroger's [201_] Annual Report on Form 10-K.
2. Using data set forth in the Audited Financials, we calculated the amount of Kroger's tangible net worth as of [December 31, 201_] as [\$____], by [subtracting the amount of net intangible assets of [\$____] from the amount of total stockholders' equity of [\$____]]. We compared the amount of Kroger's tangible net worth as so calculated with the amount set forth in Line 5 of the CFO Letter ("Tangible Net Worth"), and found such amounts to be in agreement.
3. We compared the amount of Kroger's total assets located in the United States as of [December 31, 201_] of [\$____] (as such amount was derived by Kroger from its

Appendix VI

CERCLA Financial Assurance Financial Test: Sample CPA Report (for Test Alternative 2)

[CPA Letterhead]

Independent Accountants' Report on Applying Agreed-Upon Procedures

To the Board of Directors and Management of The Kroger Co., an Ohio corporation ("Kroger"):

We have performed the procedures outlined below, which were agreed to by Kroger, to assist Kroger in confirming selected financial data contained in the attached letter from [____], Kroger's Chief Financial Officer, dated [____], to Janie Thomas, Financial Manager, Management and Technical Services Division, Region IX, U.S. Environmental Protection Agency (the "CFO Letter"). We have been advised by Kroger that the CFO Letter has been or will be submitted to the United States Environmental Protection Agency ("EPA") in support of Kroger's use of a financial test to demonstrate financial assurance for Kroger's obligations under Section XXI of the Agreement, Order on Consent and Covenant Not to Sue ("Agreement") made and entered into by and between EPA, Glendale/Goodwin Realty I, LLC, an Ohio limited liability company ("GGRI"), Kroger, and Ralphs Grocery Company, an Ohio corporation ("RGC"). The procedures outlined below were performed solely to assist Kroger in complying with the financial assurance requirements contained in the Agreement.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures we performed and our associated findings are as follows:

1. We confirm that we have audited the consolidated financial statements of Kroger as of and for the fiscal year ended [December 31, 201_] in accordance with U.S. generally accepted accounting principles (such audited, consolidated financial statements, the "Audited Financials"). Our report dated [____], with respect thereto, is included in Kroger's [201_] Annual Report on Form 10-K.
2. Using data set forth in the Audited Financials, we calculated the amount of Kroger's tangible net worth as of [December 31, 201_] as [\$____], by [subtracting the amount of net intangible assets of [\$____] from the amount of total stockholders' equity of [\$____]]. We compared the amount of Kroger's tangible net worth as so calculated with the amount set forth in Line 5 of the CFO Letter ("Tangible Net Worth"), and found such amounts to be in agreement.
3. We compared the amount of Kroger's total assets located in the United States as of [December 31, 201_] of [\$____] (as such amount was derived by Kroger from its

underlying accounting records that support the Audited Financials and notified to us in writing) with the amount set forth in Line 6 of the CFO Letter, and found such amounts to be in agreement. OR We calculated the percentage of Company assets located in the United States as of [December 31, 201_] by dividing the amount of Kroger's total assets located in the United States of [\$_____] (as such amount was derived by Kroger from its underlying accounting records that support the Audited Financials and notified to us in writing) by the amount of Kroger's total assets as defined and set forth in the Audited Financials, and found such percentage to be greater than 90%.

4. Our calculation of the amount of Kroger's tangible net worth (as set forth in Line 2 above) is [greater to or equal than] [less than] \$10 million.

5. The dollar amount identified in Line 1 of the CFO Letter is hereinafter referred to as the "Financial Assurance Amount." Our calculation of the amount of Kroger's tangible net worth (as set forth in Line 2 above) is [greater to or equal than] [less than] an amount calculated as six times the Financial Assurance Amount.

6. [Complete Line 6 only if less than 90% of Company's assets are located in the United States] Our calculation of the amount of Kroger's total assets located in the United States (as set forth in Line 3 above) is [greater to or equal than] [less than] an amount calculated as six times the Financial Assurance Amount.

The foregoing agreed-upon procedures do not constitute an audit of Kroger's financial statements or any part thereof, the objective of which is the expression of opinion on the financial statements or a part thereof. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Board of Directors and Management of Kroger and is not intended to be and should not be used by anyone other than these specified parties; provided, however, that we acknowledge and agree that Kroger may provide this report to the United States Environmental Protection Agency in support of Kroger's financial assurance demonstration under the Consent Decree.

_____ [Signature]

_____ [Name]

_____ [Date]

Appendix VII – Exhibit E to LARWQCB PPA (Updated and Revised Schedule)

Exhibit E Schedule

The schedule which follows is subject to the following:

General Premises:

1. Scope of work, assumptions, and goals for remedial activities described in the Remedial Action Plan (RAP) apply.
2. Remediation of the Property is not intended to address groundwater contamination.
3. All groundwater contamination is being addressed by US EPA through Federal Superfund proceedings that include the Glendale South Operable Unit (GSOU) of the San Fernando Valley Superfund Site.
4. Inorganic constituent of concern (COC) addressed by the RAP is hexavalent chromium (Cr6+) in onsite soil.
5. Organic COCs addressed by the RAP are perchloroethylene (PCE) and trichloroethene (TCE) in onsite soil and soil vapor.
6. Waste Discharge Requirements (WDR) permit will be issued prior to acquisition of title to the Property by one or more of Settling Respondents, and at least 6 weeks prior to scheduled start date of the large-diameter auger in-situ chemical reduction (LDA/ISCR) field pilot test.
7. LDA/ISCR Pilot Test Work Plan (WP) will be approved by Los Angeles Regional Water Quality Control Board (LARWQCB) prior to acquisition of title to the Property by one or more of Settling Respondents.
8. Soil Vapor Extraction (SVE) Pilot Test WP will be approved by LARWQCB prior to acquisition of title to the Property by one or more of Settling Respondents.
9. A deed restriction against the Property, referred to as a Covenant and Environmental Restriction on Property (CERP), will limit future use to commercial/industrial.
10. 90-Day Temporary Hazardous Waste Generator Permit will be approved by LARWQCB 6 weeks prior to LDA/ISCR pilot testing.

Well Abandonment Scope and Premises:

1. LARWQCB will approve the Well Abandonment WP at least 2 weeks prior to scheduled field work start date.
2. LARWQCB drilling field work notification process and submittal of HASP for review can be completed within 1 week.
3. County of Los Angeles Department of Public Works, Environmental Health (DEH) to approve well abandonment permits within 1 week of submittal.
4. Two on-site groundwater monitoring wells (MW2 and MW3) at the Property can be abandoned within 2 weeks prior to building demolition.
5. DEH to approve well installation permits within 1 week of submittal.
6. Contingency of 2 weeks included in the schedule for factors such as permitting, weather, and/or equipment related delays.

Hazardous Building Material Abatement and Building Demolition Scope and Premises:

1. South Coast Air Quality Management District (SCAQMD) Notification process can be completed in 2 weeks.
2. Hazardous building materials abatement can be completed within 4 weeks following completion of the above SCAQMD notification period.
3. LARWQCB will approve Building Demolition WP within 4 weeks of receipt (and at least 3 weeks prior to scheduled start date of demolition, to allow for proper notifications).
4. City of Los Angeles will approve the Building Demolition permit application within 1 week of receipt.
5. No additional impacted onsite soils will be encountered in shallow onsite soils during demolition of the building.
7. Hazardous building materials closeout documentation will be completed within 6 weeks of completion of building abatement.
8. Wells MW-2R and MW-3R can be installed and redeveloped within 2 weeks following building demolition.
9. Contingency of 8 weeks included in the schedule for factors such as permitting, weather, and/or equipment related delays.

LDA/ISCR and Cap Installation Scope and Premises:

1. The Property-specific cleanup goal for Cr6+ in onsite soil is 5.6 milligrams per kilogram (United States Environmental Protection Agency [US EPA] Industrial Regional Screening Level [RSL] for Cr6+ in soil).
2. The lateral and vertical extent of Cr6+-impacted onsite soil has a surface area of approximately 3,800 square feet and will be treated with LDA/ISCR.
3. The depth to which LDAs will be advanced will vary, and will be as deep as 45 feet below grade.
4. The approximate volume of onsite soil that will be treated is 5,800 cubic yards, including 20-percent overlap of 8-foot diameter LDAs.
5. LDA/ISCR plans and specifications will only be submitted to LARWQCB for review and approval prior to implementation.
6. LARWQCB will approve LDA/ISCR Implementation Workplan within 4 weeks of submittal (and a minimum of 6 weeks prior to scheduled pilot test).
7. LDA rig and equipment mobilization can be completed within 6 weeks.
8. LDA/ISCR field pilot test can be completed in 4 weeks.
9. LDA/ISCR Field Implementation will achieve cleanup goals within 12 weeks.
10. Swell material will be 20 to 30 percent of the total volume of onsite soil treated (maximum 2,300 tons)
11. Swell material will require offsite disposal.

12. Calcium polysulfide (CaSx) application rate/reaction time will correlate with bench-scale test results which suggested that reaction of CaSx with Cr6+ for conversion to Cr3+ in soil would be complete in less than 24 hours.

13. LDA rig and equipment demobilization, and site restoration can be completed within 5 weeks following completion of LDA drilling.

14. LDA/ISCR Closeout Reporting can be completed within 2 months following LDA/ISCR field activities.

15. An engineered cap will be installed subsequent to completion of LDA/ISCR and cement stabilization, which will be performed as part of the site restoration activities.

16. Contingency of 8 weeks included in the schedule for factors such as permitting, weather, and/or equipment related delays.

SVE Pilot Test/O&M/Rebound Testing Scope and Premises:

1. SVE and observation (OBS) wells will not require permits from the DEH.

2. SVE, with adsorption of PCE and TCE by vapor-phase granular activated carbon (VPGAC), will be confirmed as an effective technology (during pilot testing)

3. SVE pilot testing will confirm an effective radius of influence of 60 feet.

4. Contaminated groundwater upgradient of the Property will continue to migrate beneath the Property for many years, and will continue to be a source of impact to the vadose zone beneath the Property until after the off-site sources are remediated

5. Volatile organic compounds (VOCs) will be removed from the shallow vadose zone (less than 25 feet below grade) to the practical limits of the applicable SVE technology,

6. Goals for PCE and TCE in soil vapor are the commercial/industrial California Human Health Screening Levels (CHHSLs) (1.77 µg/L and 0.603 µg/L, respectively).

7. A mobile SVE system, having a various locations permit from SCAQMD, will be used to perform the SVE pilot test.

8. SVE pilot test wells can be installed within 3 weeks.

9. An SVE pilot test, vacuum step test, and constant rate test can be performed in 1 day.

10. SVE pilot test and calculations can be completed in 3 weeks.

11. SVE system design can be completed in 3 weeks.

12. Installation of SVE wells, piping, and SVE system can be completed in 2 months.

13. Normal SVE system startup and normal operations and maintenance (O&M) will be performed for 52 weeks.

14. A site-specific SCAQMD permit will be approved prior to the end of 12 months normal O&M.

15. Duration of SVE system rebound testing O&M will not exceed 2 months.

16. Electrical service will be provided by local service provider for within 12-weeks of application for service.

17. Closeout reporting can be completed within 2 months following completion of field activities.

18. Contingency of an additional 2 weeks included in the schedule for factors such as permitting, weather, and/or equipment related delays.

Post-Remedial Fieldwork and Risk Assessment Scope and Premises:

1. One baseline groundwater monitoring and analyses event, per LARWQCB General WDR Permit No. R4-2007-0019, will be performed following installation of monitoring wells MW-2R and MW-3R.
2. One year of quarterly groundwater monitoring, analyses, and four quarterly reports, per LARWQCB General WDR Permit No. R4-2007-0019, will be performed during and following completion of LDA/ISCR field activities.
3. Soil Vapor Survey (SVS) WP can be prepared and submitted within 4 weeks after initiation.
4. LARWQCB will review and approve SVS WP within 4 weeks of submittal.
5. LARWQCB SVS field work notification process and submittal of HASP can be completed within 1 week.
6. SVS field work can be completed within 4 weeks.
7. Preparation of an HHRA based on SVS results for residual concentrations of PCE and TCE in soil vapor can be completed in 9 weeks.
8. Abandonment of 7 SVE/OBS wells and 6 GW monitoring wells will be completed in 4 weeks. The abandonment of the 6 GW monitoring wells will be determined by USEPA.
9. SVS residual risk assessment and report can be prepared in 6 weeks following field activities.
10. Contingency of 2 weeks included in the schedule for factors such as permitting, weather, and/or equipment related delays.

Post-Remedial Closeout Documents Scope and Premises:

1. A Property-specific HHRA for residual concentrations of Cr6+ in onsite soil is not included in the RAP because it is assumed that risk-based cleanup goals will be achieved during LDA/ISCR field implementation.
2. A closeout report will be prepared and submitted to LARWQCB upon completion of RAP implementation.
3. Contingency of 6 weeks included in the schedule for delays to receipt of analytical data reports, and preparation of attachments to the closeout document.

Post-Emergency Conceptual Remedial Action Plan Implementation Schedule

Task	Start Date	End Date	Duration	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6	Unit 7	Unit 8	Unit 9	Unit 10	Unit 11	Unit 12
CELEBRATION	Day 1	Day 1	1 day												
TASK 1 - WELL ABANDONMENT	Day 10	Day 10	1 day												
TASK 2 - HAZARDOUS BUILDING MATERIALS ASSESSMENT AND REMOVAL/DEMOLITION	Day 10	Day 10	1 day												
TASK 3 - LEAKAGE AND CAP INSTALLATION	Day 10	Day 10	1 day												
TASK 4 - GROUNDWATER MONITORING/CONTAMINATION MONITORING	Day 10	Day 10	1 day												
TASK 5 - POST-REMEDIATION FOLLOW-UP AND RISK ASSESSMENT	Day 10	Day 10	1 day												
TASK 6 - POST-REMEDIATION DOCUMENTATION	Day 10	Day 10	1 day												

- 1. Complete the Remedial Action Plan (RAP) for the site.
- 2. Complete the Remedial Action Plan (RAP) for the site.
- 3. Complete the Remedial Action Plan (RAP) for the site.
- 4. Complete the Remedial Action Plan (RAP) for the site.
- 5. Complete the Remedial Action Plan (RAP) for the site.

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